

COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618

CHARLES W. WELCH, III
JUDGE

July 20, 2010

William D. Fletcher, Esq.
Schmittinger & Rodriguez, P.A.
414 South State Street, P.O. Box 497
Dover, DE 19903-0497

Nicole Hartman, Esq.
Department of Justice
102 West Water Street
Dover, DE 19904

RE: State of Delaware v. Anthony Riveria
Case No.: 1004005019
Cr.A.No.: K10-04-1720 (Inattentive Driving)

Decision on Defendant's Motion to Dismiss

Dear Mr. Fletcher and Ms. Taylor:

On the day of trial for this matter, the State entered a *nolle prosequi* of the information against the defendant without prejudice. The defendant moved the Court to order that the *nolle prosequi* be entered with prejudice.

Pursuant to Court of Common Pleas Criminal Rule 48(a), the State has the option to file a *nolle prosequi* with or without prejudice. The defendant, however, may ask the Court to dismiss all proceedings in the action with prejudice under Rule 48(b), if there is unnecessary delay in the filing of an information or if there is unnecessary delay in bringing the defendant to trial. CCP Crim. R. 48(b). Therefore, the Court will treat the defendant's motion to order the *nolle prosequi* be entered with prejudice as a Motion to Dismiss under Rule 48(b).

The Court has discretionary authority to dismiss a case for want of prosecution under Court of Common Pleas Criminal Rule 48(b). "This discretion is not governed by, and is broader than, the established concepts of an individual's right to a speedy trial

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under the Sixth Amendment of the U.S. Constitution.” *State v. Anderson*, 2009 WL 2620502, at *2 (Del. Super.). Although it is not necessary for a defendant to show a denial of his constitutional rights, he must prove that he has been prejudiced in some measurable way, and that such prejudice is attributable to the prosecution before a Rule 48(b) dismissal with prejudice is granted. *Id.*

Before granting a Rule 48(b) dismissal, the Court must find that any unnecessary delay in prosecution that prejudiced the defendant is attributable to the prosecution. *State v. Gootee*, 2005 WL 1840253, at *4 (Del. Com. Pl.). There is no bright line rule for what time period constitutes an “unnecessary delay.”¹ Furthermore, it is unnecessary for the Court to make a specific finding as to the prejudice suffered by the defendant in its Rule 48(b) analysis.²

In this case, the defendant was arraigned on May 19, 2010, and a case review was held on June 9, 2010. The State filed a Motion to Amend the Information on June 17, 2010, less than a month after arraignment, and the defendant filed a response in opposition to the motion on July 6, 2010. The Court denied the State’s motion on July 9, 2010, one business day before trial and only three days after the defendant filed his objection to the motion. To date, the State has not filed a new information against the defendant.

While there has been some delay in bringing the defendant to trial, the Court finds that it has not been an “unnecessary delay,” and that it was not entirely attributable to the

¹ *Id.* The Delaware Supreme Court ruled that it was not an abuse of discretion for the trial court to dismiss a case where one month elapsed between the State’s *nolle prosequi* and refiling. *Id.* (citing *State v. Hoffstein*, 315 A.2d 594, 595-596 (Del. 1974)). The Supreme Court has also held that there was no unnecessary delay when the State refiled charges one day after it *nolle prossed* an information. *Id.* (citing *Rogers v. State*, 457 A.2d 727, 733 (Del. 1983)).

² *Id.* at *5. The Delaware Supreme Court has state that a court may dismiss under Rule 48(b) “when it finds that a defendant suffered anxiety, uncertainty, increased legal and other expenses, and/or notoriety as a result of the delay . . .” *Id.* (citing *State v. Fischer*, 285 A.2d 417, 419 (Del. 1971)).

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State. The defendant took nearly three weeks to file his response to the State's Motion to Amend the Information, necessitating a ruling by the Court on the eve of trial.

In addition, the Court finds that no measurable prejudice has been suffered by the defendant as a result of any delay in this matter. Therefore, the defendant's motion is denied. The State's *nolle prosequi* of the information against the defendant is entered *without prejudice*.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek
pc: Clerk of the Court